(29)

HIGH COURT OF JUDICATURE AT BILASPUR : CHHATTISGARH

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO. 5362 OF 2006.

PETITIONER		Hem Lal Sahu, S/o Tirathram Sahu, Age about 35 years, R/o Gram – Birkoni, Tahsil & Distt. Mahasamund (C.G.)
	Versus	
RESPONDENTS	1.	State of Chhattisgarh, Through its Secretary, Mineral Resources Development, Mantralay, D.K.S. Building, Raipur (C.G.)
	2.	Director, Geology & Mining, Chhattisgarh, Raipur (C.G.)
	3.	The Collector, (Mining Section) Through the Mining Officer, Distt. Raipur (C.G.)
	4.	Vijay Gupta, S/o Shri Ramgupta, R/o Infront of Mandi Gate, Village – Aarang, Distt. Mahasamund (C.G.)

Present : Shri Yogesh Pandey, learned counsel for the petitioner.
Shri Yashwant Singh, learned Govt. Adv. for the State of C.G.

(ORAL ORDER)
(Passed on 7th November, 2006)

The lease granted in favour of the petitioner to extract minor minerals was cancelled by the Collector (Mining Section) Raipur district, the 3rd respondent herein by his order dated 29-10-2004. Having done it, the Collector by his order dated 11-11-2004 granted the lease of the same land in favour of the 4th respondent. The petitioner being aggrieved by the orders dated 29-10-2004 and 11-11-2004 preferred an appeal to the 2nd respondent herein. The 2nd respondent by his order dated 21-02-2006

allowed the appeal of the petitioner preferred against the order dated 11-11-2004 and set aside the lease granted in favour of the 4th respondent. While doing so, the Collector, however, dismissed the appeal of the petitioner in so-far-as it had assailed the correctness of the order of the Collector dated 29-10-2004 cancelling the lease earlier granted in favour of the petitioner. The petitioner being aggrieved by the above order of the 2nd respondent has preferred this writ petition under Articles 226 and 227 of the Constitution of India.

(2) I have heard learned counsel for the parties.

(3) It was contended that the Director, the 2nd respondent having appreciated the materials placed before him has rightly come to the conclusion that the lease granted in favour of the 4th respondent was erroneous and illegal, and in that view of the matter the 2nd respondent ought to have set aside the order made by the Collector on 29-10-2004 also and restored the lease in favour of the petitioner for the unexpired period of lease. It was also contended that the Collector before cancelling the lease on 29-10-2004 did not give fair and reasonable opportunity to the petitioner to have his say in the matter.

(4) The first contention of learned counsel for the petitioner is not sound. Simply because, the 2nd respondent found that the lease granted in favour of the 4th respondent was illegal and irregular, only from that fact without anything further, it would not lead to an inference that the cancellation of the lease of the petitioner vide order dated 29-10-2004 was also illegal or irregular. As regards denial of opportunity to represent his case before cancellation of the lease on 29-10-2004, suffice it to state that the 2nd respondent having perused the records of the case maintained by

the 3rd respondent-Collector has opined that despite giving reasonable and number of opportunities to the petitioner to submit his case against the proposed action of cancellation of the lease, he did not avail of the opportunities. It is well settled that if an opportunity is given to an affected interest before an adverse action is taken and such affected interest does not avail of such opportunity, it should not lie in the mouth of such affected interest to later contend that an adverse order was made without hearing him. There is no merit in the writ petition. The writ petition is, therefore, dismissed. No costs.

Sd/-
Chief Justice

Kamde